

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

# Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

CC Docket No. 96-45

## AT&T COMMENTS ON UNSERVED AND UNDERSERVED AREAS FNPRM

Pursuant to the Commission's Further Notice of Proposed Rulemaking ("FNPRM"), FCC 99-204, released September 3, 1999,<sup>1</sup> AT&T Corp. ("AT&T") submits these comments on the promotion of deployment of facilities and subscribership in unserved and underserved areas, including tribal and insular areas.

In this proceeding, the Commission seeks to implement Section 214(e)(3) of the Act, which authorizes the Commission to designate carriers to provide universal service to "unserved" areas. 47 U.S.C. § 214(e)(3). As AT&T shows in Section I, the Commission should define "*unserved*" areas as areas in which there is currently no local common carrier franchise, and it should establish a competitive bidding system for the designation of a carrier to serve those areas. Moreover, as discussed in Section II, the Commission should not establish a separate program for the non-statutory category of "*underserved*" areas at this time. The Commission should instead expand the Link-Up program to provide additional assistance to individuals whose interconnection costs are prohibitive.

<sup>1</sup>The comment date was extended to December 17, 1999 by FCC Public Notice, DA 99-2607, released November 22, 1999.

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**I. WITH MODEST BUT IMPORTANT MODIFICATIONS, THE COMMISSION SHOULD IMPLEMENT ITS PROPOSALS WITH RESPECT TO UNSERVED AREAS.**

The Commission should define "unserved" areas as areas without a local common carrier franchise. And, it should establish a competitive bidding system to determine which carrier will serve those areas.<sup>2</sup>

**A. The Commission Should Define "Unserved" Areas As Areas Without A Local Common Carrier Franchise.**

The Commission proposes to define an "unserved" area under Section 214(e)(3) as "any area in which facilities would need to be deployed in order for its residents to receive each of the services designated for support by the universal service support mechanisms." FNPRM ¶ 86. That definition would be too broad, because any new residential or industrial development within an existing service area would be an "unserved" area under Section 214(e)(3). Such areas do not require special USF support, and including such areas in the definition of "unserved" areas would unnecessarily complicate the administration of the Section 214(e)(3) program.

Rather, AT&T proposes that an "*unserved*" area be defined as any geographic area for which a local common carrier franchise does not exist. The Commission can employ a panel of experts to recommend how to carve out individual serving areas from the "unserved area" for purposes of administering Section 214(e)(3). For example, the Commission could use clustering techniques to group 80% of the households in the "unserved area" into finite serving areas, leaving the remaining 20% of households to be served by the nearest incumbent.

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<sup>2</sup>AT&T's views on "unserved" (and underserved) areas apply equally to insular areas. See FNPRM ¶¶ 136-40 (seeking comment on insular areas).

**B. The Commission Should Use Competitive Bidding To Select A Carrier To Serve "Unserved" Areas.**

AT&T agrees with the Commission that it should use competitive bidding to identify the carrier or carriers best able to provide service in unserved area. FNPRM ¶ 95. AT&T has long supported the use of competitive bidding to provide universal service to areas not currently served by any LEC. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, AT&T Further Comments at 36-40 (filed August 2, 1996). This approach also best comports with AT&T's definition of "unserved area," *i.e.*, where a local franchise does not exist.

The competitive bidding system should have certain features and safeguards. For example, the competitive bidding system should not be limited to carriers that have already been designated an eligible telecommunications carrier ("ETC"). *See* FNPRM ¶ 105. Certain carriers or technologies may be peculiarly suited to provide service in these previously unserved areas, and the Commission should not exclude such carriers merely because they are not otherwise ETCs. On the other hand, the Commission should ensure that no individual that stands to gain by the USF be allowed to participate in the bidding process. For example, Tribal authorities that control rights-of-way on tribal lands must not be affiliated with a bidding entity. FNPRM ¶ 105.

AT&T also agrees with the Commission that the winning bidder should be the only carrier designated as an ETC for the unserved area. FNPRM ¶ 106. This would both simplify the bidding process by clarifying the "prize" (*i.e.*, the winner of the bid would be the sole recipient of USF support for the serving area), and it would increase the incentives for carriers to participate in the bidding process. Designating a single winner for USF funding is fully consistent with the plain language of Section 214(e)(3), which expressly provides that the Commission may designate a "*carrier or carriers*" to provide service in such areas. 47 U.S.C. § 214(e)(3) (emphasis added); *see* FNPRM

¶ 107. Moreover, the single-winner approach would not preclude competition in the unserved area. Initially, carriers will compete for the right to be the sole recipient of the USF support in that area. Subsequently, nothing would prevent a carrier from competing for customers within the serving area, although only the winning bidder (ETC) will receive USF support.

The Commission should also adopt a three- to five-year exclusivity period for designation as an ETC. FNPRM ¶ 109. Such a period would be appropriate for allowing the winning bidder to deploy facilities necessary to meet the needs of customers in the serving area. However, such exclusivity should apply only to the ETC designation itself; if a competitive carrier "wins" a customer during this period, then the ETC should no longer receive the corresponding per-line support from the USF for that customer.

With respect to the number and type of bidding rounds (FNPRM ¶ 110), the Commission should simply construct a competitive bidding process that provides sufficient incentive for carriers to bid on the ETC designation. The Commission should determine the average rate that consumers in the state are paying for their local service and solicit bids from carriers on how much USF support they would need to provide service to consumers in the unserved area at that average rate.<sup>3</sup> The winning bidder should be the carrier who requires the smallest amount of USF support to provide universal service to the unserved area. *See* FNPRM ¶ 112.

Finally, the Commission tentatively concludes that responsibility for funding universal service in unserved areas would be divided between the federal and state governments. FNPRM ¶ 112. Although AT&T has no desire to put further pressure on states for providing support for unserved areas, if the FCC funds the full amount of

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<sup>3</sup>For consumers who cannot afford the average rate in the state, the Lifeline Assistance Program should be used to address their needs. *See* Section II.B, *infra*.

USF support, it should reconsider its high-cost funding decisions for non-rural carriers. The Commission has established over \$400 million in federal funding for these carriers before even considering the funding requirements of unserved areas, which are truly the intended beneficiaries of Section 254. Accordingly, before burdening interstate rates, the Commission should reconsider its funding of non-rural carriers.

**II. RATHER THAN INITIATE A NEW HIGH-COST PROGRAM, THE COMMISSION SHOULD EXPAND THE LINK-UP PROGRAM TO MEET THE NEEDS OF INDIVIDUALS IN "UNDERSERVED" AREAS.**

With regard to so-called "*underserved*" areas, the Commission should not initiate a new high-cost program at this time. Instead, the Commission should expand the Link-Up program to provide subsidies for individual low-income consumers in underserved areas.

**A. The Commission Should Not Initiate A New High-Cost Program For "Underserved" Areas.**

The Commission seeks comment on whether it should establish a separate, non-statutory category of "underserved areas." The Commission also suggests potential factors to be included in the definition of such areas, such as penetration rate below a certain percentage, population density below a certain level, or costs of providing supported services above a certain level. *See* FNPRM ¶ 118. The Commission should not establish a separate program for "underserved" areas at this time. The Commission should not increase federal high-cost support for "underserved" areas until it has taken sufficient steps to bring telephony to areas that are currently *unserved*.

Indeed, applying AT&T's definition of an "unserved" area, any area that is not "unserved" is in fact "served" by at least one local exchange carrier who has a franchise for the area (the incumbent). If there are carriers currently "serving" areas in

which large percentages of the population are without telephone service, the Commission should deal with such situations in one of two ways.

First, if these areas are currently served by non-rural carriers, the Commission should require these carriers to fund the increase in penetration rates out of their own resources and redeploy the non-rural high-cost support to finance the competitive bidding for support of *unserved* areas. Non-rural carriers should not be rewarded for their failure to use their high-cost support to advance universal service within their serving areas.

Second, with respect to *rural* carriers, the Commission should not establish any new universal service funding prior to issuance of the Rural Task Force report and subsequent Joint Board recommendations on high-cost support. Once the Commission addresses the issue of universal service funding for the rural carriers, it will have substantially addressed high-cost support for tribal lands.<sup>4</sup>

**B. The Commission Should Expand The Link-Up Program To Address Underserved Areas, But Should Be Cautious About Expanding The Overall Level Of Universal Service Funding.**

The Commission also asks whether it should address the high cost of interconnection by providing additional support through the Link-Up America program, at least for locations with significantly lower than average penetration rates. FNPRM ¶ 121. AT&T fully supports expansion of the Link-Up program to address the specific needs of consumers whose cost of installation are prohibitive. Indeed, the existing program, which has a maximum discount of \$30, may fall far short of the

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<sup>4</sup>*See, e.g., Communications Daily* (November 10, 1999) (National Telephone Cooperative Association study shows that small rural telcos have highest subscriber penetration on Native American reservations and have infrastructure in place to offer advanced services to those areas; on average, rural telcos serve about 70% of reservation land within their areas, and some far exceed that figure, such as Midstate Telephone Cooperative in S.D. that serves 93% of tribal land in its area; NTCA says "[t]he so-called 'digital divide' is greatly exaggerated with respect to areas served by small telephone companies").

costs of installation in extreme outlying areas. FNPRM ¶ 23. Given the size of this potential shortfall, the Commission should consider "feathering in" these one-time discounts to the most needy, similar to the way the Commission has feathered in the inside-wire discounts of the Schools and Libraries Program.<sup>5</sup>

Finally, the Commission seeks comment on whether it should increase rural health care subsidies for the upgrading of existing infrastructure. FNPRM ¶ 133. The Commission recently changed the Rural Health Care Program by making the discounts available to non-ETCs. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Order on Reconsideration, FCC 99-256, ¶¶ 14-17 (November 3, 1999). The Commission should wait to see how this expansion facilitates support for eligible rural health care providers in tribal and insular areas before expanding the program further.

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<sup>5</sup> *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, FCC 98-120 (June 22, 1998), *as clarified*, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, FCC 99-49 (May 28, 1999).

**CONCLUSION**

For the foregoing reasons, the Commission should adopt rules as described herein.

Respectfully submitted,

/s/ 

Mark C. Rosenblum

Judy Sello

AT&T CORP.

Room 1135L2

295 North Maple Avenue

Basking Ridge, NJ 07920

(908) 221-8984

Gene C. Schaerr

James P. Young

SIDLEY & AUSTIN

1722 Eye Street, N.W.

Washington, D.C. 20006

(202) 736-8141

*Attorneys for AT&T Corp.*

December 15, 1999



**CERTIFICATE OF SERVICE**

I, Laura V. Nigro, do hereby certify that on this 15<sup>th</sup> day of December, 1999, a copy of the foregoing "AT&T Comments on Unserved and Underserved Areas FNPRM" was served by U.S. first class mail, postage prepaid, on the parties named on the attached Service List.

/s/   
Laura V. Nigro

**SERVICE LIST  
UNIVERSAL SERVICE  
FEDERAL-STATE JOINT BOARD  
CC Docket No. 96-45**

**The Honorable Susan Ness, Chair**

Commissioner  
Federal Communications Commission  
445 Twelfth Street, SW, Room 8-B115  
Washington, DC 20554

**Irene Flannery**

Acting Ass't. Division Chief  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A426  
Washington, DC 20554

**The Honorable Harold Furchtgott-Roth**

Commissioner  
Federal Communications Commission  
445 Twelfth Street, SW, Room 8-A302  
Washington, DC 20554

**Paul Gallant**

Federal Communications Commission  
Legal Advisor to Commissioner Tristani  
445 Twelfth Street, SW, Room 8-C302B  
Washington, DC 20554

**The Honorable Gloria Tristani**

Commissioner  
Federal Communications Commission  
445 Twelfth Street, SW, Room A-C302  
Washington, DC 20554

**Lori Kenyon**

Common Carrier Specialist  
Alaska Public Utilities Commission  
1016 West Sixth Avenue, Suite 400  
Anchorage, AK 99501

**The Honorable Julia Johnson, Chair**

State Joint Board  
Florida Public Service Commission  
Gerald Gunter Building  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**Mark Long**

Economic Analyst  
Florida Public Service Commission  
Gerald Gunter Bldg.  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0866

**The Honorable James M. Posey**

Commissioner  
Alaska Public Utilities Commission  
1016 West 6<sup>th</sup> Ave., Suite 400  
Anchorage, AK 99501

**Sandra Makeeff Adams**

Accountant  
Iowa Utilities Board  
350 Maple Street  
Des Moines, IA 50319

**The Honorable Laska Schoenfelder**

Commissioner  
South Dakota Public Utilities Commission  
State Capitol, 500 East Capitol Street  
Pierre, SD 57501-5070

**Kevin Martin**

Federal Communications Commission  
Legal Advisor to Commissioner Furchtgott-Roth  
445 Twelfth Street, SW, Room 8-A302E  
Washington, DC 20554

**The Honorable Martha S. Hogerty**

Public Counsel  
Secretary of NASUCA  
Truman Building  
301 West High Street, Suite 250  
P.O. Box 7800  
Jefferson City, MO 65102

**Philip F. McClelland**

Assistant Consumer Advocate  
Pennsylvania Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

**Charles Bolle**

Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, NV 89701

**Thor Nelson**

Rate Analyst/Economist  
Colorado Office of Consumer Counsel  
1580 Logan Street, Suite 610  
Denver, CO 80203

**Jordan Goldstein**

Federal Communications Commission  
 Legal Advisor to Commissioner Ness  
 445 Twelfth Street, SW, Room 5-C441  
 Washington, DC 20554

**Barry Payne**

Economist  
 Indiana Office of the Consumer Counsel  
 100 North Senate Avenue, Room N501  
 Indianapolis, IN 46204-2208

**Rowland Curry**

Policy Consultant  
 Texas Public Utility Commission  
 1701 North Congress Avenue  
 P.O. Box 13326  
 Austin, TX 78701

**Brad Ramsay**

Deputy Assistant  
 General Counsel  
 National Assoc. of Regulatory Utility Commissioners  
 1100 Pennsylvania Avenue, NW  
 P.O. Box 684  
 Washington, DC 20044-0684

**Brian Roberts**

Regulatory Analyst  
 California Public Utilities Commission  
 505 Van Ness Avenue  
 San Francisco, CA 94102

**Tiane Sommer**

Special Assistant  
 Attorney General  
 Georgia Public Service Commission  
 47 Trinity Avenue  
 Atlanta, GA 30334

**Patrick H. Wood, III**

Chairman  
 Texas Public Utility Commission  
 1701 North Congress Avenue  
 P.O. Box 13326  
 Austin, TX 78711-3326

**Peter Bluhm**

Director of Policy  
 Vermont Public Service Board  
 Research Drawer 20  
 112 State St., 4th Floor  
 Montpelier, VT 05620-2701

**Walter Bolter**

Intergovernmental Liaison  
 Florida Public Service Commission  
 Gerald Gunter Building, Suite 270  
 2540 Shumard Oak Blvd.  
 Tallahassee, FL 32399-0850

**Carl Johnson**

Telecom Policy Analyst  
 New York Public Service Commission  
 3 Empire State Plaza  
 Albany, NY 12223-1350

**Doris McCarter**

Ohio Public Utilities Commission  
 180 E. Broad Street  
 Columbus, OH 43215-3793

**Susan Stevens Miller**

Assistant General Counsel  
 Maryland Public Service Commission  
 6 Paul Street, 16th Floor  
 Baltimore, MD 21202-6806

**Mary E. Newmeyer**

Federal Affairs Advisor  
 Alabama Public Service Commission  
 100 N. Union Street, Suite 800  
 Montgomery, AL 36104

**Tom Wilson**

Economist  
 Washington Utilities & Transportation Commission  
 1300 Evergreen Park Drive, S.W.  
 P.O. Box 47250  
 Olympia, WA 98504-7250

**Linda Armstrong**

Attorney  
 Federal Communications Commission  
 CCB, Accounting and Audits Division  
 Universal Service Branch  
 445 Twelfth Street, SW, Room 5A-663  
 Washington, DC 20554

**Lisa Boehley**

Attorney  
 Federal Communications Commission  
 CCB, Accounting Policy Division  
 445 Twelfth Street, SW, Room 5-B544  
 Washington, DC 20554

**Craig Brown**

Deputy Division Chief  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A425  
Washington, D.C. 20554

**Steve Burnett**

Public Utilities Specialist  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-B418  
Washington, D.C. 20554

**Bryan Clopton**

Public Utilities Specialist  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A465  
Washington, DC 20554

**Andrew Firth**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A505  
Washington, DC 20554

**Lisa Gelb**

Division Chief  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A520  
Washington, DC 20554

**Emily Hoffnar**

Federal Staff Chair  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A660  
Washington, DC 20554

**Charles L. Keller**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A664  
Washington, DC 20554

**Katie King**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-B550  
Washington, DC 20554

**Robert Loube**

Telecom. Policy Analyst  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-B524  
Washington, DC 20554

**Brian Millin**

Interpreter  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-a525  
Washington, DC 20552

**Sumita Mukhoty**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A633  
Washington, DC 20554

**Mark Nadel**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-B551  
Washington, DC 20554

**Kaylene Shannon**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A520  
Washington, DC 20554

**Richard D. Smith**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5B-448  
Washington, DC 20554

**Matthew Vitale**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-B530  
Washington, D.C 20554

**Melissa Waksman**

Deputy Division Chief  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-A423  
Washington, DC 20554

**Sharon Webber**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-B552  
Washington, DC 20554

**Jane Whang**

Attorney  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-B540  
Washington, D.C. 20554

**Adrian Wright**

Accountant  
Federal Communications Commission  
CCB, Accounting Policy Division  
445 Twelfth Street, SW, Room 5-B510  
Washington, DC 20554

**Ann Dean**

Assistant Director  
Maryland Public Service Commission  
6 Paul Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202-6806

**David Dowds**

Public Utilities Supervisor  
High Cost Model  
Florida Public Service Commission  
Gerald Gunter Bldg.  
2540 Shumard Oaks Blvd.  
Tallahassee, FL 32399-0866

**Don Durack**

High Cost Model  
Staffer for Barry Payne  
Indiana Office of Consumer Counsel  
100 North Senate Avenue  
Indianapolis, IN 46204-2208

**Greg Fogleman**

Regulatory Analyst  
High Cost Model  
Florida Public Service Commission  
Gerald Gunter Bldg.  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0866

**Anthony Myers**

Technical Advisor  
High Cost Model  
Maryland Public Service Commission  
6 St. Paul Street, 19<sup>th</sup> Floor  
Baltimore, MD 21202-6806

**Diana Zake**

Texas Public Utility Commission  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, TX 78711-3326

**Tim Zakriski**

NYS Department of Public Service  
3 Empire State Plaza  
Albany, NY 12223